

2026 IL App (1st) 241446-U
No. 1-24-1446
Order filed September 30, 2026

Sixth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit
	)	Court of Cook County.
Plaintiff-Appellee,	)	
	)	No. 15 CR 3215
v.	)	
	)	
ANTONIO CARDONA,	)	Honorable
	)	Eulaila DeLaRosa,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE EVANS delivered the judgment of the court.
Presiding Justice Gamrath and Justice Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Separate convictions for aggravated criminal sexual assault violated the one-act, one-crime doctrine. The court did not err in imposing an extended term sentence.
- ¶ 2 This case concerns the intersection of the habitual criminal recidivism provision, 730 ILCS 5/5-4.5-95(a) (West 2024), and the fifth and sixth amendments of the United States Constitution, as well as the one-act, one-crime doctrine. We find Antonio Cardona’s fifth and sixth amendment rights were not violated when the trial court imposed extended-term sentences without submitting to the jury the question of whether his former convictions qualified him for sentencing under the

recidivism statute. We vacate Cardona's aggravated criminal sexual assault/bodily harm conviction (720 ILCS 5/11-1.30(a)(2) (West 2014)), where it violates the one-act, one-crime doctrine.

¶ 3

I. BACKGROUND

¶ 4

Cardona was charged with seven counts of aggravated criminal sexual assault and seven counts of aggravated criminal sexual abuse, arising from an incident on January 28, 2015. Prior to trial, the court held two hearings on Cardona's fitness to stand trial (finding after the first that he was unfit but capable of rehabilitation and finding after the second that he was fit). Cardona ultimately went to trial on only two counts of aggravated criminal sexual assault.

¶ 5

The evidence proffered at Cardona's 2023 jury trial was as follows. On January 27, 2015, victim K.M. (we refer to the victim by her initials to maintain her anonymity) and several family members attended a funeral for a deceased family member. K.M. was 20 years old at the time but functioned cognitively at the level of a five or six-year-old child. K.M. was epileptic, had attention-deficit/hyperactivity disorder, and required a cochlear implant.

¶ 6

Following the funeral, several family members—including Cardona—visited the two-bedroom apartment where K.M. and her mother, Z.P. (we refer to her by her initials to maintain the victim's anonymity), were living. The family members spent time together until approximately 2 a.m. the next morning, with some imbibing alcohol and marijuana.

¶ 7

Cardona, Z.P.'s first cousin once removed, asked if he could spend the night at the apartment. Z.P. allowed him to sleep over. K.M.'s sister, Jeniece Lopez, and Z.P.'s first cousin, Maribel Medina, slept in the apartment's two bedrooms. K.M. and Z.P. slept on the living room sectional. Cardona slept on the floor of the living room.

¶ 8 Z.P. awoke at approximately 4:50 a.m. and observed K.M., awake and lying on her back, with Cardona on top of her. They were both covered by a blanket. Z.P. pulled Cardona off K.M. and observed that both K.M. and Cardona were undressed from the waist down.

¶ 9 Z.P. took K.M. into the bathroom and saw that K.M. was bleeding from her vagina. Z.P. also saw blood in the toilet. Z.P. exited the bathroom and approached Cardona, whose semi-erect penis was still unclothed. Z.P. began to hit Cardona about the head and body.

¶ 10 Lopez awoke to Z.P. screaming and saw Cardona was naked from the waist down, with a “semi-hard” penis. Noting that K.M. was in the bathroom and Z.P. had started to hit Cardona, Lopez called 911. Police officers responded to the call and ultimately arrested Cardona.

¶ 11 Z.P. brought K.M. to the hospital, where the treating nurse helped perform an exam and complete a sexual assault kit. K.M. related that someone had pulled her pants down, got on top of her, and hurt her privates. K.M. relayed she did not want the person to have sex with her and tried to push him off. The nurse observed bleeding from K.M.’s vagina, swelling of her labia majora, and a vaginal tear.

¶ 12 On January 29, Z.P. brought K.M. to the Children’s Advocacy Center, where she participated in a victim sensitive interview (VSI). K.M. relayed that her cousin pushed her down and had sex with her, despite her trying to push him away. Additionally, she marked a diagram indicating her “privacy” was her vagina. The VSI was entered into evidence.

¶ 13 Investigation of K.M.’s sexual assault kit resulted in the extraction of a male DNA profile from which Cardona could not be excluded.

¶ 14 K.M. recalled a time when she lived in Illinois and someone hurt her “privacy.” K.M. referred to her “privacy” as the part of her body that is “only for myself” and is used to “go to the bathroom.” She could not remember exactly when this happened but recalled her uncle had died

before the incident. At trial, K.M. could not identify Cardona as the person who hurt her. Cardona denied any sexual contact with K.M.

¶ 15 The jury found Cardona guilty of aggravated criminal sexual assault/bodily harm (720 ILCS 5/11-1.30(a)(2) (West 2014)), and aggravated criminal sexual assault/physical disability (*id.* § 11-1.30(a)(6) (West 2014)). Cardona filed a motion for a new trial, alleging various evidentiary errors and insufficient evidence, which was denied.

¶ 16 The State filed a petition pursuant to 730 ILCS 5/5-4.5-95(a) (West 2024) to have Cardona sentenced to a term of natural life imprisonment, arguing he had two prior Class X felonies that mandated adjudging him as a habitual criminal. Defense counsel made no argument regarding the application of the recidivism provision and did not contest that Cardona met the requirements. Counsel instead filed an extensive mitigation memo, arguing for the court to consider Cardona's background—including his mental health and time spent in solitary confinement—in sentencing him. Cardona gave a statement in allocution, proclaiming his innocence.

¶ 17 Finding the habitual criminal statute applicable, the court sentenced Cardona to two concurrent terms of life imprisonment. The court did not merge Cardona's convictions prior to imposing sentence. Cardona filed a motion to reconsider his sentence, arguing its excessiveness due to the presence of mitigating factors. The motion was denied, and this timely appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Cardona argues (1) one aggravated criminal sexual abuse conviction should be vacated under the one-act, one-crime doctrine, and (2) the trial court erred by imposing extended-term sentences without submitting to the jury the question of whether his former convictions qualified him for sentencing under the recidivism statute. He contends that the proper remedy in this case is reversal of his sentence and remand for a new sentencing hearing, where the jury would

consider whether his prior convictions necessitated a sentence of natural life under section 5-4.5-95(a).

¶ 20 A. One-Act, One-Crime

¶ 21 Cardona first argues that one of his two aggravated criminal sexual assault convictions should be vacated based on the one-act, one-crime doctrine. The State concedes the trial court erred by not merging the convictions prior to sentencing. Although Cardona forfeited this claim by failing to raise the issue in the trial court, we may still review the issue on appeal. *People v. Smith*, 2019 IL 123901, ¶ 14. “An alleged one-act, one-crime violation is reviewable under the second prong of the plain-error doctrine because it affects the integrity of the judicial process.” *Id.*

¶ 22 The one-act, one-crime doctrine “prohibits convictions for multiple offenses that are based on precisely the same physical act.” *Id.* ¶ 13. A reviewing court “must first determine whether a defendant’s conduct consisted of a single physical act or separate acts.” *Id.* ¶ 15. An “act” is defined as “any overt or outward manifestation which will support a different offense.” (Internal quotation marks omitted.) *Id.* ¶ 18.

¶ 23 Here, we agree with the parties and find that Cardona’s two aggravated criminal sexual assault convictions are improper because they are based on precisely the same physical act. The charges here were not predicated on separate, distinct physical actions but instead related to one act of penetration on one occurrence.

¶ 24 We agree with the State that remand on the issue is unnecessary and we reject Cardona’s request for us to vacate count five, aggravated criminal sexual assault/physical disability (720 ILCS 5/11-1.30(a)(6) (West 2014)). In the interest of judicial economy, where both convictions are equally serious, we vacate Cardona’s conviction for aggravated criminal sexual assault/bodily

harm (*id.* § 11-1.30(a)(2) (West 2014)) and affirm his conviction for aggravated criminal sexual assault/physical disability (*id.* § 11-1.30(a)(6)).

¶ 25 B. Extended-Term Sentence

¶ 26 Next, Cardona argues that whether he was eligible for an extended-term sentence under the habitual criminal statute was a question of fact that should have been submitted to the jury and found beyond a reasonable doubt. Therefore, he argues the court's imposition of a natural life sentence is in violation of the holding in *Erlinger v. United States*, 602 U.S. 821 (2024), and *Apprendi v. New Jersey*, 540 U.S. 466 (2000).

¶ 27 Of note, Cardona does not now—nor has he ever—contested his eligibility as a habitual criminal under the recidivism statute. He similarly does not raise any issues regarding his former convictions, or their timings.

¶ 28 Cardona did not raise this issue in response to the State's petition to have him sentenced to a term of natural life imprisonment. Nor did he raise the issue during his sentencing hearing or in his motion to reconsider sentence. The State argues that Cardona has forfeited this claim, due to his failure to raise the issue before the trial court. To preserve a claim of error for appellate review, a defendant must both object contemporaneously and raise the issue in a posttrial motion. *People v. Bahena*, 2020 IL App (1st) 180197, ¶ 28 (citing *People v. Williams*, 2013 IL App (1st) 111116, ¶ 106); *People v. Dorsey*, 2023 IL App (1st) 200304, ¶ 66.

¶ 29 Cardona admits he did not raise this issue in the trial court; however, he asks that we review his contention under the second prong of the plain error doctrine. Under certain circumstances, the doctrine permits review of an otherwise forfeited claim of error. *People v. Sebby*, 2017 IL 119445, ¶ 48; *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). The doctrine allows this Court to address

clear and obvious errors that were unpreserved at the trial level. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 30 A defendant must show either that (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) the “error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” (Internal quotation marks omitted.) *People v. Reese*, 2017 IL 120011, ¶ 60.

¶ 31 A court's misapplication of the law amounts to plain error if it affects a defendant's fundamental right to liberty. *People v. Smith*, 2016 IL App (1st) 140496, ¶ 15. This Court has held that “[f]or plain error, an *Apprendi* claim requires a showing of prejudice.” *People v. Gully*, 2020 IL App (1st) 180275, ¶ 22. “There is no prejudice, and thus no plain error, from an alleged *Apprendi* violation if undisputed evidence shows that the State could have proven the sentence-enhancing facts beyond a reasonable doubt.” *Id.*

¶ 32 The first step in our analysis is determining whether an error occurred at all. *Id.* Absent any clear or obvious error, there can be no plain error and the defendant's forfeiture will be honored. *People v. Naylor*, 229 Ill. 2d 584, 602 (2008); *People v. Eppinger*, 2013 IL 114121, ¶ 19. The defendant has the burden of persuasion under both prongs of the plain error doctrine. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 33 Although we deem it appropriate to consider Cardona's argument under plain error review, for the reasons that follow, we conclude that no clear or obvious error resulted from the court's determination that Cardona was subject to life imprisonment under the habitual criminal recidivism statute.

¶ 34

1. *Apprendi*

¶ 35

In *Apprendi*, the Supreme Court examined whether it was permissible for a trial court to sentence a defendant to an extended-term sentence, where that sentence exceeded the maximum range for the offense charged. 530 U.S. at 466.

¶ 36

Apprendi, who admitted he shot into the home of an African American family, pled guilty to possession of a firearm for an unlawful purpose, a second-degree offense. *Id.* The State, at sentencing, argued for the application of a “hate crime law,” which authorized an extended-term sentence. *Id.* at 468-69. Following an evidentiary hearing, the court found the hate crime enhancement applied. *Id.* at 470-71.

¶ 37

Apprendi appealed, arguing “that the Due Process Clause of the United States Constitution requires that the finding of bias upon which his hate crime sentence was based must be proved to a jury beyond a reasonable doubt.” *Id.* at 471. The appellate court upheld *Apprendi*’s enhanced sentence, finding the hate crime enhancement was a “sentencing factor,” and not an element of the underlying offense. *Id.* The New Jersey Supreme Court likewise affirmed, *id.* at 472, however, the United States Supreme Court reversed and remanded the case.

¶ 38

The Court found that the hate crime enhancement was unconstitutional because the effect was to turn a second-degree offense into a first-degree offense. *Id.* at 494; 497. The Court explained that “[t]he Fourteenth Amendment right to due process and the Sixth Amendment right to trial by jury, taken together, entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.” *Id.* at 466.

¶ 39

The New Jersey hate crime enhancement, the Court found, was “an unacceptable departure from the jury tradition that is an indispensable part of our criminal justice system.” *Id.* at 497. The Court held, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for crime

beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt.” *Id.* at 490.

¶ 40 Our supreme court addressed *Apprendi* in *People v. Swift*, where Swift was convicted of first degree murder and was sentenced to an extended-term sentence of 80 years’ imprisonment. 202 Ill. 2d 378 (2002). The court noted that the sentencing range for first degree murder was 20 to 60 years’ imprisonment and Swift’s 80-year extended-term resulted from a factual finding by the trial court that the crime was brutal and heinous. *Id.* at 379-80. The court remanded the case, noting that a “defendant’s sentence cannot stand unless he was eligible for such a sentence *without* such a finding—*i.e.*, based solely on the facts found by the jury beyond a reasonable doubt.” *Id.* at 384, 392.

¶ 41 Post *Apprendi*, it has been well established in Illinois that section 5-4.5-95(a) did not violate *Apprendi*’s jury fact-finding requirement since it addressed only recidivism. See *e.g. Brown*, 229 Ill. 2d at 384 (noting that a defendant’s status as an habitual criminal is a sentencing factor and not an element of the underlying offense for which he is being sentenced); *People v. Henderson*, 343 Ill. App. 3d 1108 (2003), *modified on reh’g*, (Sept. 25, 2003) (holding the Habitual Criminal Act does not violate the *Apprendi* requirement); *Morissette v. Briley*, 326 Ill. App. 3d 590 (2001) (same); *People v. Ligon*, 365 Ill. App. 3d 109, 127 (“the “fact of a prior conviction,” which may be found by a sentencing court, includes facts intrinsic in the conviction, such as its timing and its sequence in relation to other convictions.”)

¶ 42 Further, Illinois courts have previously found that “[f]acts intrinsic to the conviction, including defendant’s age and the dates of the commission and sequence of convictions need not be proven beyond a reasonable doubt to the jury.” (Internal quotation marks omitted). *People v. Coopwood*, 2025 IL App (3d) 240579-U (citing *People v. Yancy*, 368 Ill. App. 3d 381, 393 (2005)).

¶ 43

2. Illinois's Recidivism Statute

¶ 44

As our resolution of the issue raised in this appeal “requires us to interpret and apply the statutory provisions concerning habitual criminals under the circumstances present here,” our review is *de novo*. *People v. Brown*, 229 Ill. 3d 374, 382 (2008).

¶ 45

Section 5-4.5-95(a) mandates that every person who has previously been convicted of two Class X felonies, and who later is convicted of a third Class X felony, shall be sentenced to life imprisonment. 730 ILCS 5/5-4.5-95(a)(1) (West 2024). The court sentenced Cardona to natural life imprisonment based on his prior Class X felonies, which were (1) a May 4, 1992 conviction for armed robbery and attempted murder; and (2) a February 1, 2008 conviction for armed robbery.

¶ 46

To be extended-term eligible under this section: (1) Cardona must have been convicted of two prior felonies; (2) he had to be at least 21 years of age when the first felony was committed; (3) each subsequent offense must have been committed after the prior; (4) the last offense was committed after July 3, 1980; and (5) the third offense must have been committed within 20 years of the date of judgment on the first conviction, excluding time spent in custody. *Id.* § 5-4.5-95(a)(4)(A-E) (West 2024)).

¶ 47

Section 5/5-4.5-95(a)(7) provides that:

“A duly authenticated copy of the record of any alleged former conviction of an offense set forth in this Section shall be *prima facie* evidence of that former conviction; and a duly authenticated copy of the record of the defendant's final release or discharge from probation granted, or from sentence and parole supervision (if any) imposed pursuant to that former conviction, shall be *prima facie* evidence of that release or discharge.” 730 ILCS 5/5-4.5-95(a)(7) (West 2024).

¶ 48 Here, the presentence investigation, the certified copies of conviction, the certified case summaries, and the verification of incarceration record provided the following information. Cardona's was born on August 5, 1969. He reached the age of 21 on August 5, 1990. His first offense, under case number 91 CR 638802, was committed at the age of 21 on February 1, 1991. He was released on parole, or mandatory supervised release (MSR), on October 25, 1996, and his 12-year sentence was discharged on October 25, 1999. His second offense, under case number 07 CR 2596301, was committed on August 19, 2007. He was released on parole or MSR on August 23, 2013. He returned to the custody of the Illinois Department of Corrections (IDOC) on February 5, 2015, and his 12-year sentence was discharged on November 19, 2015.

¶ 49 The final offense, aggravated criminal sexual assault, occurred on January 28, 2015. This date is indisputably after July 3, 1980, and is within 20 years of Cardona's October 25, 1996, release from IDOC following his first Class X conviction. On the face of the documents presented to the trial court, Cardona met the qualifications to be considered a habitual criminal and the trial court was mandated to sentence him to natural life.

¶ 50 3. Jury Requirement

¶ 51 Cardona nevertheless contends that, in light of the 2024 Supreme Court ruling in *Erlinger*, 602 U.S. 821, the trial court erred by failing to submit to the jury the question of his eligibility under the habitual criminal statute.

¶ 52 In *Erlinger* the Supreme Court examined the application of the fifth and sixth amendments of the United States Constitution to the sentencing enhancement imposed by the Armed Career Criminal Act of 1984 (ACCA) (18 U.S.C. § 924(e)(1) (2012)). 602 U.S. at 825. On appeal, the government conceded error and agreed that the constitution required a jury to unanimously decide,

beyond a reasonable doubt, whether Erlinger had committed the qualifying crimes on separate occasions. *Id.* at 834.

¶ 53 The Court noted that “[t]o trigger ACCA and expose him to longer prison terms, the government had to prove that his past included three convictions for violent felon[ies] or serious drug offense[s] that were committed on occasions different from one another.” (Internal quotation marks omitted). *Id.* Determining that the ACCA required an intensely fact-based inquiry, the Court held that the factfinder must determine (1) if the crimes were committed close in time; (2) what was the proximity of the crimes’ locations; and (3) if the crimes were similar or intertwined in purpose and character. *Id.*

¶ 54 Finding that each question “require[s] facts to be found before ACCA’s more punitive mandatory minimum sentence may be lawfully deployed,” the Court determined that these facts “must be resolved by a unanimous jury beyond a reasonable doubt.” *Id.* The Court noted that, “while recognizing Mr. Erlinger was entitled to have a jury resolve ACCA’s occasions inquiry unanimously and beyond a reasonable doubt, we decide no more than that.” *Id.* at 835.

¶ 55 Following *Erlinger*, several Illinois appellate districts have analyzed how the Court’s new precedent applies to Illinois law. See *People v. Holman*, 2025 IL App (2d) 240513; *Coopwood*, 2025 IL App (3d) 240579-U; and *People v. Cooper*, 2026 IL App (5th) 250282.¹

¶ 56 We find *Holman* to be instructive. *Holman* argued that under *Erlinger*, the trial court’s failure to submit the question of his extended-term eligibility to the jury violated his constitutional rights. 2025 IL App (2d) 240513. *Holman* was convicted of armed violence and the trial court found he was eligible for an extended-term sentence under 730 ILCS 5/5-5-3.2(b)(1) (West 2022). *Id.* ¶ 42.

¹Unpublished Rule 23 orders entered on January 1, 2021, or later “may be cited for persuasive purposes.” Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025).

¶ 57 To be eligible under section 5-5-3.2(b)(1), Holman “must have been convicted of the same, similar, or greater class of felony within the last 10 years.” *Id.* Holman argued that the question of whether his prior conviction had occurred within the last 10 years was a question of fact beyond the mere fact of a prior conviction and needed to be proven by a jury beyond a reasonable doubt. *Id.* ¶ 43.

¶ 58 The court found that the mere fact of Holman’s prior felony conviction “does not need to be submitted to a jury.” *Id.* ¶ 45. It rejected Holman’s argument that the jury should have determined whether the timing of the prior conviction occurred within 10 years of the current conviction. *Id.* 46. The court noted it is well-settled precedent in Illinois that section 5-5-3.2(b)(1) is constitutional under *Apprendi*. *Id.*

¶ 59 The requirements of section 5-5-3.2(b)(1), the court found, presented “a much simpler inquiry than those presented by the Armed Career Criminal Act and can be readily discerned by review of public records or the presentence investigation.” *Id.* The court noted that “the Supreme Court made it clear that its decision in *Erlinger* did not overturn or narrow the holdings in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and *Apprendi*, 530 U.S. 466.” *Id.*

¶ 60 The court further noted that:

“Our Third District and several other foreign state courts with similar sentencing statutes have already rejected the proposition that *Erlinger* requires the date of a prior conviction to be submitted to a jury. *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 19; *Denson v. State*, 401 So. 3d 633, 633-34 (Fla. Dist. Ct. App. 2025) (*per curium*); *People v. Jackson*, 86 Misc.3d 411 (2025); *State v. Calvert*, 65 Kan. App. 2d 301 (2025). We hold that the date of defendant’s release from custody is not a fact that must be submitted to a jury but is ‘intrinsic to the conviction’ and can be properly determined by the court. See *People v.*

Yancy, 368 Ill. App. 3d 381, 393 (2005). Further, we note that courts may take judicial notice of the public records of the Illinois Department of Corrections regarding the dates of a conviction and release from custody. *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010).” *Holman*, 2025 IL App (2d) 240513, ¶ 47.

¶ 61 Similar to the Second District’s analysis in *Holman*, we find the facts of this case differ from those in *Erlinger*. The trial court’s determination that Cardona was a habitual criminal under section 5-4.5-95(a) did not require an “intensely factual” based inquiry. *Erlinger*, 602 U.S. at 828.

¶ 62 Rather, it simply required taking judicial notice of Cardona’s prior convictions, the date on which they occurred, and the amount of time that lapsed between the first and last conviction. See *People v. Schulz*, 2024 IL App (1st) 240422, ¶ 12 (court took “judicial notice of the computerized docket of the clerk of the circuit court of Cook County”); *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010) (“a reviewing court may take judicial notice of public records and other judicial proceedings”). Here, Cardona does not contend that his 1991 conviction, which he completed the sentence for in 1996, was part of the same criminal episode as the charges he amassed in 2008 and 2015, nor can he. See *Cooper*, 2026 IL App (5th) 250282, ¶ 59.

¶ 63 The trial court properly relied on Cardona’s presentence investigation and certified copies of Cardona’s convictions to establish the existence of “prior conviction[s] for purposes of imposing an extended-term sentence under section [5-4.5-95(a)].” (Internal quotation marks omitted). *Cf. Coopwood*, 2025 IL App (3d) 240579-U, ¶ 18 (finding the court properly imposed an extended-term sentence under section 5-5-3.2(b)(1)).

¶ 64 The court was not required to “decide what [Cardona] actually did, or the means or manner in which he committed his offense[s] in order to increase the punishment to which he might be

exposed.” (Internal quotation marks omitted.) *Erlinger*, 602 U.S. at 839-40. “There was no fact for the fact finder to resolve.” *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 18.

¶ 65 As the Fifth District noted in *Cooper*, following *Erlinger* “three separate districts of our appellate court either have outright rejected the notion that *Erlinger* imposes a requirement that a trial court must submit the date of a prior conviction to a jury or have reacknowledged that section 5-5-3.2 of the Code of Corrections is not facially unconstitutional.” 2026 IL App (5th) 250282, ¶ 55 (citing to *Holman*, 2025 IL App (2d) 240513, ¶¶ 43-45; *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 19; *Watts*, 2024 IL App (1st) 231265-U, ¶ 49).

¶ 66 We find, in line with the earlier decisions from the Second, Third, and Fifth Districts, “that *Erlinger* neither narrows nor overturns *Appendi* and *Almendarez-Torres*.” *Id.* ¶ 59.

¶ 67 We acknowledge that section 5-4.5-95 requires a defendant to satisfy more prerequisites to be adjudged a habitual criminal than those required under 5-5-3.2(b)(1) for an extended-term sentence. Nonetheless, section 5-4.5-95 similarly required the court to establish the existence of prior convictions to impose an extended-term sentence. The trial judge examined court records for the limited function of determining the fact of Cardona’s prior convictions—whether they were Class X offenses and when they occurred. As such, we find section 5-4.5-95(a) is still facially constitutional.

¶ 68 Because we have concluded the trial court did not clearly or obviously err, there can be no plain error. See *People v. Lewis*, 2019 IL App (1st) 160705, ¶ 36. Additionally, Cardona is unable to show prejudice, where the undisputed evidence shows that the State could have proven the sentence-enhancing facts beyond a reasonable doubt. See *Gully*, 2020 IL App (1st) 180275, ¶ 22. Consequently, we reject Cardona’s argument and affirm the trial court’s judgment finding him eligible for a sentence of natural life imprisonment under section 5-4.5-95(a).

¶ 69

III. CONCLUSION

¶ 70

We affirm Cardona's extended-term sentence. Because Cardona's separate convictions violate the one-act, one-crime doctrine, we vacate his conviction of aggravated criminal sexual assault/bodily harm (720 ILCS 5/11-1.30(a)(2) (West 2014)).

¶ 71

Affirmed in part and vacated in part.